IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 253 OF 2003

1. Smt. Arcanja Rodrigues
   De Sa, major, widow of
   late Shri Joao Lourenco
   De Sa, resident of
   House No.402, IInd Arvalem,
   Cortalim, Goa.

2. Shri Joao De Sa,
   major, son of late
   Shri Joao Lourenco De Sa,
   resident of House No.402,
   IInd Arvalem, Cortalim,
   Goa. ... Petitioners.

versus

1. State of Goa
   through Chief Secretary,
   Secretariat, Panaji, Goa.

2. Captain of Ports,
   Captain of Ports Department,
   Government of Goa, Panaji.

3. Deputy Captain of Ports,
   Captain of Ports Department,
   Mormugao Harbour, Goa. ... Respondents.

Mr. S. S. Kantak with Ms. Rakhi M. Chodankar, Advocates for the Petitioners.

Mrs. Winnie Coutinho, Government Advocate for Respondent Nos.1, 2 and 3.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 23RD JULY, 2003.

ORAL JUDGMENT(PER F.I.REBELLO, J.)

Rule.

Respondents waive service. Heard forthwith.

2. The late husband of the Petitioner No.1 had an inland vessel registered in his name. It is the case of the Petitioner No.1 that on the death of her husband she addressed a letter to Respondent Nos.2 and 3 to permit the transfer of registration of the vessel from her late husband to Petitioner No.2, her elder son. The case of the Petitioner No.1 is that Respondent Nos.2 and 3 have not acceded to the same on the ground that port dues/rental charges of Government Riverine land of the said vessel are outstanding. Respondent Nos.2 and 3 contended that though there are no port dues, wharfage dues and tonnage dues against the said vessel, there are dues in respect of the land encroached by the Petitioners and claimed or belonging to the Government. Inspite of the various demands for transfer of registration, Respondents have refused to effect registration and consequently the present Petition.

Inland vessel LA-SOCORRINA II was registered under the Inland Steam Vessel Act, 1917 with Respondent No.3 on 6th June, 1977. The husband of Petitioner No.1 expired on 31st March, 2002. Thereafter, steps were

taken and various applications filed. By letter of 4th September, 2002, Respondent No.2 wrote to the Petitioner No.1 pursuant to the application of August, 2002, that as there were no dues payable, the Office has no objection to issue plying N.O.C. to subject Vessel upon completion of all formalities and payment of Annual Licence fees. It is the case of the Petitioners that they were, therefore, surprised that on 15th November, 2002, they received a communication from Respondent No.3 that they had to clear the dues outstanding against the Port dues/rental charges of Government Riverine land of the said vessel, to process the case further. Various other correspondence exchanged have been adverted to. It is also pointed out that the service certificates have been taken. It is also the case of the Petitioner No.1 that she addressed a letter to Respondent No.3 as to what are the dues outstanding since the vessel was remaining idle. The case of the Petitioner No.1 is that the Respondents are contending by their letters to pay the rental charges of the riverine land. The case of the Petitioner is that in respect of the land there has been a communication addressed more specifically by letter of 11th December, 2001, whereby Respondent No.2 was informed that the land has been wrongly claimed by Respondent No.2 as Government land and if her husband had paid any amount to the Government that is on account of mistake and that Respondent No.2 should refund the

amount paid. The further pleadings are that the Respondent No.2 denied the said allegations as set out in the letter of 24th December, 2001, and demanded payment of the outstanding dues of Rs.2,83,828/-. An opportunity of the hearing was also given to the Petitioner No.1. The case of the Petitioner is that it is a private property of Francisco Xavier Faria from Verna and surveyed under the Old Cadastral Survey under No.222. It is also the case of the Petitioner No.1 that an application has been filed before the Deputy Collector under Sub-Section 3 of Section 14 for enquiry into title of the land and for a declaration that the Government is not the owner of the land. By Order of 13th November, 2002, notice was issued to the Respondents and in the meantime parties were directed to maintain status quo. It is, therefore, the case of the Petitioners that they are entitled to a mandamus to be issued against the Respondents for transferring the registration of the vessel in favour of Petitioner No.2.

3. On behalf of the Respondents, an Affidavit has been filed by Captain A. P. Mascarenhas, Captain of Ports. It is contended therein that the owner of inland vessel is required to pay all outstanding dues owed to the Government before the transfer of ownership of the vessel is effected in terms of Rule 64 of the Goa, Daman and Diu Port Rules, 1983. It is pointed out that the

Petitioners themselves have paid the Port dues of the vessel. However, the Petitioner has not cleared all the Port rental charges in respect of an area of land admeasuring 307 sq. metres which is a Riverine Land and has been illegally reclaimed along the bank of River Zuari. The amount claimed are under Rule 54(a)(2) and 54(a)(3) of the Goa Ports(Amendment) Rules 1994. It is also pointed out that a Survey was conducted in the presence of the Petitioners representative and it was pointed out that the encroached area is around 307 sq. metres adjacent to the plot of the Petitioner. Inspite of the demand made, neither the late husband nor the Petitioners have paid the amount. It is set out that the reason why Respondent Nos.2 and 3 are not transferring the ownership of the vessel is on account of the charges in respect of Government Riverine Land. It is also pointed out that N.O.C. was given only in respect of plying of the vessel. It is also pointed out that a sum of Rs. 1 per sq. metre for the encroached land (307 sq. metres) from 4th July,1993 onwards altogether amounting to Rs.33,216/- was paid by the Petitioner. It is contended that the Petition be rejected.

4. We have heard learned Counsel for the parties. Under the Inland Steam Vessel Act, 1917, under Section 19M(1), an inland vessel registered under this Act in

one State shall not be transferred to a person resident in another State in India or in any country outside India, withouut the previous approval of the Government of the State in which the vessel is registered. We are not concerned with this in this Petition as admittedly, the Petitioner No.2 is a resident of the State. The vessel stands in the name of his late father and transfer is sought in the name of Petitioner No.2.

In so far as Sub-Section (2) is concerned, the owner of an inland(mechanically propelled vessel) registered under this Act and the transferee thereof shall, within thirty days of the transfer of ownership of the said vessel to the transferee, jointly make a report of the transfer to the registering authority within the local limits of whose jurisdiction the transferee resides or carries on business and shall also forward the certificate of registration to that registering authority, together with prescribed fee, in order that particulars of the transfer of ownership may be entered thereon. Assuming that this Sub-Section 2 is applicable, though, in our opinion, this is not the case as there is on the facts of this case no transfer of ownership as such, as what is sought is only transfer of registration from the late husband/father of the Petitioners to Petitioner No.2. All that can be demanded therefore is the prescribed fee if and at all.

5. The State of Goa has framed Rules which are known as The Goa Port Rules 1983 which have been amended and notified in 1994. Reliance has been placed by the Respondents on Rule 64 of the said Rules. Rule 64 reads as under:-

> "Port dues and other fees shall be levied at all the ports at the rates specified in the Schedule".

In other words, in so far as this Rule is concerned, it only permits levying of dues and other fees at the rates specified in the Schedule at the Ports. The Rule does not provide that unless the dues are paid registration cannot be transferred. Apart from this Rule, there are no other Rules pointed out to us except for Rule 55 which only provides that all fees leviable shall be paid in advance. Our attention is also invited to Rule (ff) and Rule 54-A under which the Respondents are entitled to charge any person who uses riverine land without prior permission and without making advance payment at the rate of Re.1/- per sq. metre per month. Apart from that, Sub Rule (3) confers powers on the Government to direct restoration of the land to its pristine condition and in addition to the fine to pay an amount of Rs.150/- per day till such use is stopped and such land restored to its pristine condition.

6. In the instant case, admittedly, apart from the dues for the riverine land, it is the case of the Respondents themselves that no other dues are payable. The only question, therefore, is whether on account of failure to pay the dues of the riverine land, can the Respondents refuse transfer of registration in favour of Petitioner No.2.

In our opinion, unless there is a power in the Respondents not to effect registration for failure to pay the riverine dues then only could the Respondents have refused transfer of registration. Merely because there are riverine dues payable even if they be admitted dues, registration cannot be refused. The Respondents can only act according to law which would be the Act and the Rules framed thereunder. Neither in the Act or the Rules is there power conferred on the Respondents express or implicit to refuse transfer of registration of an inland vessel to a person residing in the same State. In the instant case the transfer is sought from the late father of Petitioner No.2 to Petitioner No.2.

Merely because in the past, the late husband of Petitioner No.1 has paid some dues or there are letters on record to show purported admissions of occupatino of riverine land also can be no ground in the instant case. Apart from that, Petitioners have moved

for an enquiry under the Land Revenue Code and that has commenced. It is only after that enquiry is completed or if there be any power under the Rules framed for recovery of the dues can the Respondents proceed according to law. At any rate, registration cannot be refused on the ground that riverine dues are due and payable. The only reason given, therefore, cannot be sustained. The Petition will have to be allowed.

7. In the light of that, Rule made absolute in terms of prayer clauses (a) and (b).

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.